

AMENDED IN SENATE MARCH 24, 2008

AMENDED IN SENATE SEPTEMBER 5, 2007

AMENDED IN ASSEMBLY MAY 9, 2007

AMENDED IN ASSEMBLY MAY 3, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1546

Introduced by Assembly Member Charles Calderon
(Coauthor: Senator Oropeza)

February 23, 2007

~~An act to amend Section 17942 of, and to add Section 19394 to, the Revenue and Taxation Code, relating to limited liability companies, to take effect immediately, tax levy. An act to amend Section 17942 of the Revenue and Taxation Code, relating to taxation.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1546, as amended, Charles Calderon. Income taxes: limited liability companies: ~~apportionment~~. *fees*.

The Personal Income Tax Law requires every limited liability company subject to a specified tax to pay, annually to this state, a fee equal to specified amounts based upon total income from all sources reportable to this state. ~~That law defines total income as gross income, as defined, plus the cost of goods sold, as specified. derived from or attributable to this state. The fee is due and payable on or before the 15th day of the 4th month following the close of the taxable year and penalties and interest are payable for violations, as specified.~~

This bill would require that the fee be estimated and paid no later than the 15th day of the 6th month of the taxable year, and would impose an additional penalty for underpayment, as provided.

~~This bill, for taxable years beginning on and after January 1, 2007, would clarify that total income from all sources reportable to this state means gross income, as defined, plus the cost of goods sold, as specified, derived from or attributable to this state within the meaning of specified provisions of the Corporation Tax Law relating to apportionment and allocation, as provided. This bill would make legislative findings and declarations regarding the necessity for the equitable treatment of limited liability companies.~~

~~Existing law provides, for the purposes of specified taxes, that if any deduction, credit, or exclusion administered under the Personal Income Tax Law or the Corporation Tax Law is finally adjudged discriminatory against a national banking association under a specified federal law, or is for any reason finally adjudged invalid, or discriminatory under the California Constitution or the laws or Constitution of the United States, the tax shall be recomputed by the Franchise Tax Board, as specified.~~

~~This bill would provide, for the purposes of a tax or fee imposed under the Personal Income Tax Law or the Corporation Tax Law, or for the administration of those laws, that if any fee, tax, deduction, credit, or exclusion is finally adjudged as discriminatory or unfairly apportioned under the California Constitution or the laws or the Constitution of the United States, the fee or tax of a disfavored taxpayer that files, or has filed, a timely claim for refund asserting discrimination or unfair apportionment shall be recomputed by the Franchise Tax Board for the taxable year in question, as of the time of allowance of the recomputation, deduction, credit, or exclusion, only to the extent necessary to remedy the discrimination or unfair apportionment not otherwise relieved by existing law, and that the amount of the fee or tax as originally computed shall be subject to the provisions relating to original computations.~~

~~This bill would make findings with regard to actions for refunds of fees.~~

~~This bill would take effect immediately as a tax levy.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 **SECTION 1.** *Section 17942 of the Revenue and Taxation Code*
2 *is amended to read:*

3 17942. (a) In addition to the tax imposed under Section 17941,
4 every limited liability company subject to tax under Section 17941
5 shall pay annually to this state a fee equal to:

6 (1) Nine hundred dollars (\$900), if the total income from all
7 sources derived from or attributable to this state for the taxable
8 year is two hundred fifty thousand dollars (\$250,000) or more, but
9 less than five hundred thousand dollars (\$500,000).

10 (2) Two thousand five hundred dollars (\$2,500), if the total
11 income from all sources derived from or attributable to this state
12 for the taxable year is five hundred thousand dollars (\$500,000)
13 or more, but less than one million dollars (\$1,000,000).

14 (3) Six thousand dollars (\$6,000), if the total income from all
15 sources derived from or attributable to this state for the taxable
16 year is one million dollars (\$1,000,000) or more, but less than five
17 million dollars (\$5,000,000).

18 (4) Eleven thousand seven hundred ninety dollars (\$11,790), if
19 the total income from all sources derived from or attributable to
20 this state for the taxable year is five million dollars (\$5,000,000)
21 or more.

22 (b) (1) (A) For purposes of this section, “total income from all
23 sources derived from or attributable to this state” means gross
24 income, as defined in Section 24271, plus the cost of goods sold
25 that are paid or incurred in connection with the trade or business
26 of the taxpayer. However, “total income from all sources derived
27 from or attributable to this state” shall not include allocation or
28 attribution of income or gain or distributions made to a limited
29 liability company in its capacity as a member of, or holder of an
30 economic interest in, another limited liability company if the
31 allocation or attribution of income or gain or distributions are
32 directly or indirectly attributable to income that is subject to the
33 payment of the fee described in this section.

34 (B) For purposes of this section, “total income from all sources
35 derived from or attributable to this state” shall be determined using
36 the rules for assigning sales under Sections 25135 and 25136 and
37 the regulations thereunder, as modified by regulations under

1 Section 25137, other than those provisions that exclude receipts
2 from the sales factor.

3 (2) In the event a taxpayer is a commonly controlled limited
4 liability company, the total income from all sources derived from
5 or attributable to this state, taking into account any election under
6 Section 25110, may be determined by the Franchise Tax Board to
7 be the total income of all the commonly controlled limited liability
8 company members if it determines that multiple limited liability
9 companies were formed for the primary purpose of reducing fees
10 payable under this section. A determination by the Franchise Tax
11 Board under this subdivision may only be made with respect to
12 one limited liability company in a commonly controlled group.
13 However, each commonly controlled limited liability company
14 shall be jointly and severally liable for the fee. For purposes of
15 this section, commonly controlled limited liability companies shall
16 include the taxpayer and any other partnership or limited liability
17 company doing business (as defined in Section 23101) in this state
18 and required to file a return under Section 18633 or 18633.5, in
19 which the same persons own, directly or indirectly, more than 50
20 percent of the capital interests or profits interests.

21 ~~(e) The fee assessed under this section shall be due and payable~~
22 ~~on the date the return of the limited liability company is required~~
23 ~~to be filed under Section 18633.5, shall be collected and refunded~~
24 ~~in the same manner as the taxes imposed by this part, and shall be~~
25 ~~subject to interest and applicable penalties.~~

26 (c) (1) *The fee imposed by this section shall be estimated and*
27 *paid on or before the 15th day of the sixth month of the current*
28 *taxable year.*

29 (2) *A penalty of 50 percent of the amount of any underpayment*
30 *shall be added to the fee. The underpayment amount shall be equal*
31 *to the difference between the total amount of the fee due imposed*
32 *by this section for the taxable year less the amount paid under*
33 *paragraph (1) by the date specified in that paragraph. A penalty*
34 *shall not be imposed with respect to any fee estimated and paid*
35 *under this section if the amount paid by the date prescribed in this*
36 *subdivision is equal to or greater than the total amount of the fee*
37 *of the limited liability company for the preceding taxable year.*

38 (d) *The fee imposed by this section shall be collected and*
39 *refunded in the same manner as the taxes imposed by this part,*
40 *and shall be subject to applicable interest and penalties.*

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Senate, September 5, 2007. (JR11)**

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